

MERIT SYSTEM BOARD

General Rules and Department Organization

Proposed Readoption: N.J.A.C. 4A:1

Authorized By: The Merit System Board, Margaret E. L. Howard, Presiding Board Member.

Authority: N.J.S.A. 11A:1-2, 11A:2-1, 11A:2-3, 11A:2-6, 11A:2-7, 11A:2-11, 11A:2-12, 11A:3-1, 11A:3-6, 11A:4-13, 11A:10-1, 11A:10-3, 11A:10-4, 11A:11-2, 52:14B-3(1), 52:14B-3(3), 52:14B-4(f), L.2001, c.5, L.2001, c.404, N.J.A.C. 1:30 et seq., 42 U.S.C. 12101 et seq., and 28 C.F.R. Part 35.107.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002-374.

A public hearing concerning the proposed readoption will be held on:

Tuesday, November 19, 2002 at 3:00 P.M.
Merit System Board Room
44 South Clinton Avenue
Trenton, New Jersey

Please call Elizabeth Rosenthal of the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by December 20, 2002 to:

Henry Maurer, Director
Merit System Practices and Labor Relations
Unit A
Department of Personnel
P.O. Box 312
Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1(c), N.J.A.C. 4A:1 expires on March 21, 2003. The Merit System Board has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by law. Since N.J.A.C. 4A:1 was last readopted in 1997, various amendments have been adopted, as required by legislative enactment, in accordance with recommendations by advisory boards with whom the Commissioner of Personnel consults, and pursuant to Departmental review of the rules.

Subchapter 1 concerns the purpose and scope of the rules and definitions of commonly used merit system terms. Provisions include procedures for rule relaxation by the Board and petitions for rulemaking.

Subchapter 2 covers public records and Department of Personnel access to appointing authority records. It is noted that extensive proposed amendments, repeals and new rules regarding public records and implementing the Open Public Records Act (OPRA) appeared in the July 1, 2002 issue of the New Jersey Register. See 34 N.J.R. 2215(a). Therefore, this proposed readoption of N.J.A.C. 4A:1 does not reflect the proposed OPRA amendments, repeals and new rules.

Subchapter 3 governs the organizational structure of the Department of Personnel and delineates the respective responsibilities of the Commissioner of Personnel and the Merit System Board.

Subchapter 4 concerns pilot programs, a mechanism for the consolidation of merit system functions in State service and the delegation of certain merit system functions to appointing authorities.

Finally, subchapter 5 governs the disability discrimination grievance procedure required by the Americans With Disabilities Act (ADA). This subchapter is exempt from expiration pursuant to N.J.S.A. 52:14B-5.1(e), as required under 28 CFR Part 35, and discussion of subchapter 5 is included herein for discussion of the chapter in its entirety.

Although the Board does not propose amendments to N.J.A.C. 4A:1 at this time, it is anticipated that amendments regarding the rulemaking process will be proposed at a later date.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption at N.J.A.C. 4A:1 would have an overall positive social impact on all users of merit system rules, in that the rules would continue to be logically organized, understandable and reflective of current practice as well as current law. N.J.A.C. 4A:1-1.2(c) advises appointing authorities, employees and members of the

public that either the Commissioner or Board may relax a rule for good cause in a particular situation, so long as the prescribed procedures for doing so are followed and the relaxation is not inconsistent with the Civil Service Act or another statute. This demonstrates the flexibility of the merit system to address unusual circumstances not contemplated by the rules and is therefore a positive feature of the rules. Additionally, the definitions in N.J.A.C. 4A:1-1.3 provide essential information regarding the meaning of numerous terms used elsewhere in the rules.

As noted in the Summary above, the rule regarding access to public records in N.J.A.C. 4A:1-2.2 does not reflect the amendments, repeals and new rules that the Board recently proposed regarding the Open Public Records Act (OPRA). Therefore, the version of N.J.A.C. 4A:1-2.2 included in the instant proposed readoption does not address OPRA's requirements. However, following adoption of that rule proposal, N.J.A.C. 4A:1 will soon reflect all of OPRA's mandates.

The rules concerning the disability discrimination grievance procedure help to ensure that people protected by the Americans With Disabilities Act (ADA) have equal access to Department of Personnel facilities and a means of enforcing their rights to such access.

Economic Impact

The rules proposed for readoption at N.J.A.C. 4A:1 would minimize the amount of inquiries and controversies requiring agency action. For example, the definitions in N.J.A.C. 4A:1-1.3 clarify the meaning of important terms used throughout the rules. Also, individuals are given a specific procedure to follow in N.J.A.C. 4A:1-1.4 to petition for rule changes.

Moreover, the demarcation of responsibilities is clearly delineated between the Merit System Board and the Commissioner of Personnel in N.J.A.C. 4A:1-3. Additionally, individuals wishing to file a grievance under the ADA are advised in N.J.A.C. 4A:1-5 on the procedures for carrying out such a grievance. The proposed readoption, therefore, would have a positive economic impact on State government, public employers and employees, as well as the taxpayers in general.

Federal Standards Statement

With the exception of subchapter 5, N.J.A.C. 4A:1 is not subject to any Federal requirements or standards. Although the disability discrimination grievance procedure in subchapter 5 is subject to requirements set forth by the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) and its implementing regulations (28 C.F.R. Part 35.107), it is consistent with, but does not exceed, Federal requirements contained therein. Therefore, a Federal standards analysis is not necessary.

Jobs Impact

It is not anticipated that the rules proposed for readoption at N.J.A.C. 4A:1 would have any jobs impact. No jobs would be created or lost due to the rules proposed for readoption.

Agriculture Industry Impact

It is not anticipated that the rules proposed for readoption would have any agriculture industry impact. The rules concern employment in the public sector and the organization of the Department of Personnel.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for readoption at N.J.A.C. 4A:1 would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules would regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the rules proposed for readoption at N.J.A.C. 4A:1 would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:1.